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Wendi Leigh Weinstein
PO Box 1404
Alexandria VA 22313-1404

In re Application of: GANDEMO :
Appl. No.: 10/717,541 : DECISION ON PETITION
Filed: November 21, 2003 :
For: ABSORBENT ARTICLE WITH IMPROVED :
CLOSING MECHANISM :

This is a decision on the timely petition filed on October 11, 2005 by which petitioner requests withdrawal of the finality of the Office action dated August 11, 2005. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioner urges reconsideration of the final rejection on the basis of improper scanning of the originally filed application. Petitioner outlines a case indicating the USPTO has scanned/entitled part of the English language translation as the complete application rather than the application as originally filed. Additionally, Petitioner has included an evidentiary photocopy of the postcard receipt of the November 21, 2003 application submission in further support of the contention that the application was originally filed with claims 1 –6, rather than claims 1 –4 as examined.

Review of the instant file indicates these statements appear to be true. The postcard receipt of the November 21, 2003 indicates the application as originally filed contained claims 1-6, and is considered prima facie evidence of a total of six claims present upon filing. In addition, the transmittal letter contained with the original filing indicates a total of six claims filed. PTO form 875 (fee worksheet) indicates the office acknowledged a total of six claims were present at filing. Further on March 30, 2004 petitioner filed a request for corrected filing receipt requesting the total claims be changed from “4” to “6” also supporting petitioner’s contention that six claims were originally filed.

As only claims 1-4 were examined in the first office action, and claims 1-6 finally rejected in the August 11, 2005 office action, it appears as though claims 5 and 6 were treated on the merits for the first time in the August 11, 2005 final rejection. These claims were originally filed and not

added via amendment as advanced by the examiner. As a matter of form, the finality of the rejection mailed August 10, 2005 is withdrawn. The fact that the claims were rejected under the identical art and grounds of record is not probative.

The application is being forwarded to the Examiner of record for re-issuance of the last office action with the finality removed.

PETITION GRANTED



Frederick R. Schmidt, Director
Technology Center 3700